

# California Administrative Per Se

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2008/2009

Prepared by DMV Research and Development Branch 11/10/09

## Background

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In 1990, California became the 28th state to implement an immediate driver license suspension law for alcohol-impaired drivers, also referred to as an "Administrative Per Se (APS)" or "on-the-spot" license suspension law. Forty-one states currently have an APS law of some kind and all 50 states and the District of Columbia have laws defining it as a crime to drive with a blood alcohol concentration (BAC) at or above the proscribed level of at least .08%. The California APS law requires the Department of Motor Vehicles (DMV) to suspend or revoke the driving privilege of persons who are arrested for driving with a blood alcohol concentration (BAC) of .08% or more, or who refuse a chemical test upon arrest. In January 1994, California implemented a companion driver license suspension law, known as the "zero tolerance law," which requires DMV to suspend for one year any driver under age 21 with a BAC of .01% or more as measured by an alcohol screening test, or who refuses or fails to complete the test. The .01% BAC law provides for a hardship restriction only if a BAC test was completed and the driver can demonstrate a critical need to drive. All states now also have "zero tolerance" laws for underage drivers.

Under a new driver license suspension law, as of January 2009, DMV is required to suspend for one year, the driving privilege of any driver who is on probation for a prior DUI offense and who is caught driving with a BAC of .01% or more as measured by an alcohol screening test, or who refuses or fails to complete the test. This action is carried out concurrently with any .08 APS action imposed for the same offense. These administrative actions are independent of any criminal penalties imposed in court for conviction of the driving-under-the-influence (DUI) offense. Upon arrest, citation (as may be applicable in a probation violation), or detention (as applicable in the .01% APS law), the driver's license is immediately confiscated and an order of suspension or revocation served.

For each law, due process is allowed by the issuance of a 30-day temporary license intended to provide the driver with sufficient time to challenge the suspension through DMV administrative review. Offenders who are dismissed for insufficient evidence or are never charged by the court for DUI may request an APS dismissal hearing to consider setting aside the associated APS action. Under the .08% APS law, when a driver submits to and "fails" a BAC test and has no prior DUI convictions or APS actions (within 10 years), a 4-month license suspension is imposed. Following 30 days of "hard" suspension, and providing they first demonstrate proof of insurance, show proof of enrollment in an alcohol treatment program, and pay all penalty fees, the law provides for such drivers to obtain a 5-month restricted license that allows driving to and from an alcohol treatment program, and to, from, and during the course of employment. A 1-year suspension is imposed on drivers having one or more prior DUI convictions or APS actions within 10 years, with no provision for a restricted license.

For offenders refusing a BAC test, a 1-year license suspension is imposed for a first offense, a 2-year revocation is imposed for a second offense, and a 3-year revocation is imposed for a third or subsequent offense (within 10 years). There are no provisions for issuance of a restricted license following a BAC test refusal.

A commercial driver arrested for DUI in a noncommercial vehicle and having no prior DUI convictions or APS actions may downgrade to a noncommercial license and apply for a first-offender restricted license. As of January 1, 2007, the per se BAC limit was reduced to .04% for commercial drivers operating a commercial vehicle in association with the arrest, and these commercial drivers are eligible for the same restriction as other drivers committing a first offense, except the restriction does not allow travel to, from, or in the course of employment.

## Key Findings for FY 2008/2009

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- In addition to the APS actions already in operation, as of 1/1/09 drivers on probation for a prior DUI conviction who are caught driving with a BAC of .01% or higher are subject to a separate but concurrent administrative license action. The total APS actions listed in this fact sheet do not include counts of these administrative probation violation actions, but they are listed separately; there were 2,615 in the first 6 months of the program.
- Administrative license suspension or revocation actions, or administrative per se (APS) actions initiated in FY 08/09 increased only slightly (up less than 1%) over those initiated in FY 07/08. However, the proportion of actions that were vacated, or set aside, increased to 8.54% (up 3.9% from last year's 8.22%) of actions initiated. Set asides resulting from hearing decisions dropped in all categories of hearings except those resulting from hearings held for .08 refusal cases, for which set asides increased by 14.9%. This suggests that the increase in set asides largely occurred during administrative review and not as a result of a hearing.
- Nearly 10% (9.8%) more hearings were requested in FY 08/09, with over one quarter (27.7%) of all APS actions initiated resulting in a hearing. This proportion of actions resulting in a scheduled hearing represents a 9.1% increase in the hearing rate from the prior year's rate.
- A stay of the APS action was imposed for 89.4% of the actions for which a hearing was scheduled in FY 08/09, up 2.3% from the 87.4% that were stayed for hearings scheduled in FY 07/08. A stay indicates that the onset of the suspension action was delayed pending completion of a hearing.
- Departmental reviews held of prior hearings increased 13.9% in FY 08/09, but the proportion set aside subsequent to review dropped 41.9% from the prior year's set asides, decreasing from 4.7% set aside in FY 07/08 to 2.7% set aside in FY 08/09.
- "Driver Safety/Driver Investigation" reviews increased 60.3% from the prior year's total to 420 scheduled investigations in FY 08/09. Of such actions reviewed, 72.7% were set aside. A policy change was made in 2000 that should have discontinued use of these reviews for APS cases.
- The number of APS orders of suspension mailed by the department (in place of, or in addition to, those issued by law enforcement) decreased 4.9% this year, constituting 20.1% of all orders issued. APS orders of suspension are mailed by the department to correct an original order issued by law enforcement or when there is no record of an order being issued by law enforcement.
- While most (73.4%) restriction-eligible first-offenders opted for the full 4-month hard suspension term rather than seeking an earlier restricted driving privilege, the number of first .08 offenders obtaining a 5-month restriction increased 10.9% over those obtained in FY 07/08.
- The percentage of total arrested DUI offenders who refused a chemical test dropped for the fourth consecutive year, to 4.29% (down 9.1%) in FY 08/09.
- There were 34 APS suspensions imposed in FY 07/08 on commercial drivers who were identified as driving in a commercial vehicle at the time of their violation. This figure is 61.9% greater than the total of 21 such actions taken in FY 07/08.
- In FY 08/09 repeat offenders constituted 27.8% of all .08 APS offenders (up 2.6% from last year). This continued higher percentage from the low of 23.8% repeat offenders in FY 03/04 may reflect the impact of the January 1, 2005 law that increased the time from 7 to 10 years that must pass without another APS action or DUI conviction before an offender would again be considered a first offender.

## Administrative Per Se Process Measures

	FY 07/08	FY 08/09	% change <sup>1</sup>
• Total APS <sup>2</sup> actions initiated (including actions later set aside)	218,776	220,309	0.7
• Total .08 <sup>3</sup> APS actions initiated	195,179	197,554	1.2
• Total .01 <sup>4</sup> suspensions initiated	23,597	22,755	-3.6
• Total APS actions set aside	17,980	18,815	4.6
• Total .08 APS actions set aside	16,678	17,541	5.2
• Total .01 suspensions set aside	1,302	1,274	-2.2
• <b>Total APS set aside rate</b>	8.22%	8.54%	3.9
• Total .08 set aside rate	8.54%	8.88%	3.9
• Total .01 set aside rate	5.52%	5.60%	1.5
• <b>Net total APS actions taken (excluding actions later set aside)</b>	<b>200,796</b>	<b>201,494</b>	<b>0.3</b>
• Net total .08 APS actions	178,501	180,013	0.8
• Net total .01 actions	22,295	21,481	-3.7
• Total APS actions taken, suspension/revocation order served by:			
• Law enforcement	172,106	175,933	2.2
• DMV	46,670	44,376	-4.9

### Net APS Actions by Offender Status/License Classification:<sup>5</sup>

• Net total APS actions, noncommercial drivers	197,851	200,906	1.5
• Net total commercial driver license (CDL) APS actions taken	2,945	2,915	-1.0
• Net total actions of commercial drivers in commercial vehicles	21	34	61.9
• <b>Net APS .08 actions for drivers with no prior DUI convictions or APS actions<sup>6</sup></b>	<b>129,755</b>	<b>130,022</b>	<b>0.2</b>
• 4-month license suspensions	92,283	89,615	-2.9
• 30-day suspensions plus 5-month COE <sup>7</sup> restrictions	29,250	32,451	10.9
• First-offender chemical test refusals	5,604	5,137	-8.3
• CDL first offender suspensions/restrictions	2,618	2,819	7.7
• <b>Net APS .08 actions taken for drivers with prior DUI convictions</b>	<b>48,746</b>	<b>49,991</b>	<b>2.6</b>
• Suspensions	45,085	46,646	3.5
• Revocations	3,661	3,345	-8.6
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS <sup>8</sup> ) test	21,827	21,109	-3.3
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	467	372	-20.3

### APS Chemical Test Refusal Process Measures:

• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	10,323	9,448	-8.5
• Total .08 refusal actions set aside	559	568	1.6
• Total .01 refusal actions set aside	30	26	-13.3
• <b>Net total .08 and .01 APS refusal actions (excluding actions later set aside)</b>	<b>9,734</b>	<b>8,854</b>	<b>-9.0</b>
• Net total .08 refusal actions	9,266	8,482	-8.5
• Net total .01 refusal actions	468	372	-20.5
• <b>Chemical test refusal rate (including actions later set aside)</b>	<b>4.72%</b>	<b>4.29%</b>	<b>-9.1</b>
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	5,604	5,137	-8.3
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	3,662	3,345	-8.7
• Total Probation violation <sup>1</sup> actions initiated from 1/1/09-6/30/09 (including actions later set aside)	NA	2,615	NA

<sup>1</sup> Percent change figures shown throughout document may not agree with raw percent calculations due to rounding of all percentages.

<sup>2</sup> APS actions (both .08 and .01) refer to actions initiated in conjunction with a DUI arrest or zero tolerance detention. Probation violation APS actions are those taken under VC § 23154. A single arrest results in concurrent actions taken for both the APS and probation violation if a violator was arrested for DUI while on DUI probation.

<sup>3</sup> .08 refers to APS actions taken subsequent to obtaining evidence of a Blood Alcohol Concentration (BAC) equal to or in excess of the .08% per se level or on the basis of a chemical test refusal. Such an action is taken in conjunction with a DUI arrest.

<sup>4</sup> 01 refers to APS suspensions taken against drivers under the age of 21 with BACs of .01% or greater or on the basis of a chemical test refusal, and are not necessarily taken in conjunction with a DUI arrest.

<sup>5</sup> All entries in this category exclude actions later set aside but, where possible, include actions taken on the basis of either a chemical test refusal or a BAC test result.

<sup>6</sup> Prior DUI convictions or APS actions consist of any such conviction or action where the violation occurred within 10 years prior to the current violation.

<sup>7</sup> This restriction allows driving to, from, and during the course-of-employment (enacted 1/1/95).

<sup>8</sup> PAS is a Preliminary Alcohol Screening test which is considered legally sufficient evidence to impose an action under the provisions of the zero tolerance laws.

**Total APS Hearings:<sup>9</sup>**

	<b>FY 07/08</b>	<b>FY 08/09</b>	<b>% change</b>
• Total .08 and .01 inperson or telephone APS hearings scheduled	55,535	61,003	9.8
• Percentage of total APS actions resulting in scheduled hearings <sup>10</sup>	25.4%	27.7%	9.1
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action <sup>11</sup>	87.4%	89.4%	2.3
• Total .08 and .01 inperson or telephone APS hearings held and/or completed	55,221	60,710	9.9
<b>.08 Hearing Activity:</b>			
• .08 hearings held and/or completed	50,360	55,788	10.8
• .08 actions set aside following hearings	4,604	4,724	2.6
• Percentage of .08 APS actions set aside following hearings	9.1%	8.5%	-7.4
<b>.01 Hearing Activity:</b>			
• .01 hearings held and/or completed	4,861	4,922	1.3
• .01 actions set aside following hearings	513	476	-7.2
• Percentage of .01 APS actions set aside following hearings	10.6%	9.7%	-8.4

**APS Chemical Test Refusal Hearings:**

• Total .08 and .01 APS refusal hearings scheduled	3,393	3,418	0.7
• Percentage of total refusal actions resulting in a scheduled hearing	32.9%	36.2%	10.1
<b>.08 Refusal Hearing Activity:</b>			
• .08 refusal hearings held and/or completed	3,254	3,291	1.1
• .08 refusal actions set aside following hearings	371	431	16.2
• Percentage of .08 APS refusal actions set aside following hearings	11.4%	13.1%	14.9
<b>.01 Refusal Hearing Activity:</b>			
• .01 refusal hearings held and/or completed	124	109	-12.1
• .01 refusal actions set aside following hearings	21	14	-33.3
• Percentage of .01 refusal actions set aside following hearings	16.9%	12.8%	-24.2

**Other APS Activity:**

• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right to a hearing requirements	175	163	-6.9
• APS dismissal hearings held and/or completed	175	162	-7.4
• APS actions set aside following dismissal hearings	48	44	-8.3
• Percentage of APS actions set aside following dismissal hearings	27.4%	27.2%	-1.0
• Total .08 and .01 Driver Safety/Driver Investigations scheduled <sup>12</sup>	262	420	60.3
• APS Driver Safety/Driver Investigations held and/or completed	241	403	67.2
• Actions set aside following APS Driver Safety/Driver Investigations	131	293	123.7
• Percent APS actions set aside following Driver Safety/Driver Investigations	54.4%	72.7%	33.8
• Total .08 and .01 APS departmental reviews scheduled	1,385	1,575	13.7
• APS departmental reviews held and/or completed	1,380	1,572	13.9
• APS actions set aside following departmental review	65	43	-33.8
• Percentage of APS actions set aside following departmental reviews	4.7%	2.7%	-41.9

<sup>9</sup> These figures include refusal hearings but exclude Driver Safety/Driver Investigation hearings, subsequent APS dismissal hearings and departmental reviews.

<sup>10</sup> Both numerator and denominator include those actions later set aside as a result of the hearing.

<sup>11</sup> A stay indicates that the onset of the suspension action was delayed pending completion of a hearing. The hearings scheduled in these counts may be for actions that were initiated anytime in the past but for which the hearing was scheduled or held in this reporting year.

<sup>12</sup> These cases may or may not have involved a hearing request.